

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 17-40 are presently active in this case. The present Amendment amends Claims 17-19, 22, 24, 27-32; and adds Claims 36-40.

The outstanding Office Action objected to Claims 30 and 32 for being in improper dependent form. Claims 17-35 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Claims 17-35 were rejected under 35 U.S.C. § 102(b or e) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Balderson et al. (U.S. Patent No. 5,617,812), Gabele et al. (U.S. Patent No. 5,508,006), Perlman et al. (U.S. Patent No. 4,526,752), Krumhar et al. (U.S. Patent No. 5,096,813) or Kurrle (U.S. Patent No. 6,214,766).

In response to the objection of Claims 30 and 32, these two claims are rewritten in independent form, as suggested by the Examiner.

In response to the rejection under 35 U.S.C. § 112, second paragraph, Claim 17 is amended to correct the noted informalities. In particular, Claim 17 is amended to more clearly claim the cosmetic product as part of the packaging device, as well as the composition of the authentication element. The last clause of Claim 17, relating to the counterpart authentication element and its second chemical reagent is deleted, as suggested by the Examiner. Kit Claim 30, which claims the *counterpart* authentication element and its second chemical reagent, now requires the last clause previously recited in Claim 17. Claims 18-19 are also amended to further limit the composition of the claimed authentication element and its first chemical reagent. In view of the changes to the claims, all pending claims are believed to be definite and no further rejection on that basis is anticipated. If, however, the

Examiner disagrees, the Examiner is invited to telephone the undersigned who will be happy to work with the Examiner in a joint effort to derive mutually acceptable language.

In order to vary the scope of protection recited in the claims, new dependent Claims 36-40 are added. New Claims 36-40 find non-limiting support in the disclosure as originally filed, for example from page 5, line 27 to page 6, lines 8. Therefore, the changes to the claims are not believed to raise a question of new matter.¹

In response to the rejections of the claims under 35 U.S.C. § 102(b) and 35 U.S.C. §103(a), and in light of the present Amendment, Applicant respectfully requests reconsideration of these rejections and traverses the rejections, as discussed next.

Briefly recapitulating, Applicant's invention, as recited in amended Claim 17 relates to a packaging device for a cosmetic product. The device includes a cosmetic product, at least one container forming at least one compartment in which the cosmetic product is directly or indirectly placed; and at least one authentication element incorporated in the container. The authentication element incorporates at least one first chemical reagent having a composition such that, when placed in contact with a second chemical reagent present on a counterpart authentication element, the first chemical reagent produces a detectable change in the second chemical reagent on the counterpart authentication element.

Claim 36 requires that the composition of the first chemical reagent include a color developer. Claim 37 specifies that the composition of the first chemical reagent includes an organic acid. Claim 38 requires the organic acid as being selected from the group consisting of maleic, malonic, succinic, glutaric, adipic, tricarballic, diglycolic, lactic, malic, tartaric and citric acids.

¹ See MPEP 2163.06 stating that "information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter."

Kit Claim 30 requires the same packaging device as in Claim 17, and in addition, requires the counterpart authentication element with its second chemical reagent. Claim 30 specifies that the second chemical reagent has a composition such that, when placed in contact with the first chemical reagent on the authentication element of the device, the second chemical reagent is modified in a detectable manner. Claim 30 also requires that the composition of the second chemical reagent be such that the second chemical reagent is chromogenic following contact with the first chemical reagent.

Dependent kit Claim 39 requires that the composition of the first chemical reagent include a color developer; and that the second chemical reagent be a colorant former. Dependent kit Claim 40 limits the composition of the first chemical reagent to an organic acid selected from the group consisting of maleic, malonic, succinic, glutaric, adipic, tricarballic, diglycolic, lactic, malic, tartaric and citric acids; and further limits the second chemical reagent to being selected from the group consisting of a bisindolylphthalide compound, a aminofluorane compound, a phthalide compound, and a diaminofluorane compound.

Turning now to the applied prior art, the Balderson et al. patent discloses a tamper evident system for indicating when a closed enclosure has been opened. The Gabele et al., patent discloses a sterilization container for surgical instruments. The Perlman et al. patent discloses an indicator in a package which will show whether or not the original seal on the package has been broken and contents exposed to air. The Krumhar et al. patent discloses a colorimetric indicator system to warn of tempering in a sealed package. The Kurrle patent discloses a method for authenticating security paper.

The Balderson et al., Gabele et al., Perlman et al., Krumhar et al. and Kurrle fail to disclose the claimed packaging device, nor the claimed kit, nor the claimed process. For example only, the Balderson et al., Gabele et al., Perlman et al., Krumhar et al. and Kurrle

patents fail to disclose the claimed container in which a cosmetic product is placed and incorporating the claimed authentication element with a first chemical reagent having a composition such that, when placed in contact with a second chemical reagent present on a counterpart authentication element, the first chemical reagent produces a detectable change in the second chemical reagent on the counterpart authentication element, as required by Claim 17. The Balderson et al., Gabele et al., Perlman et al., Krumhar et al. and Kurrle patents fail to disclose the claimed composition for the first chemical reagent, as specified in Claims 36-40. The Balderson et al., Gabele et al., Perlman et al., Krumhar et al. and Kurrle patents fail to disclose the claimed kit including the counterpart authentication element with its second chemical reagent, as required in Claims 30-31 and 39-40.

Therefore, the Balderson et al., Gabele et al., Perlman et al., Krumhar et al. and Kurrle patents fail to disclose every feature recited in Applicant's claims, so that Claims 17-40 are not anticipated by the prior art. Accordingly, Applicant respectfully traverses, and requests reconsideration of, the 35 U.S.C. § 102 rejections based on the Balderson et al., Gabele et al., Perlman et al., Krumhar et al. and Kurrle patents.²

Furthermore, there is no apparent reason to modify the teachings of the Balderson et al., Gabele et al., Perlman et al., Krumhar et al. and Kurrle patents so as to arrive at Applicant's claimed packaging device, kit, or process. It is well settled that all claim limitations must be considered by the Office before making an obviousness rejection.³ The position that these teachings *could* be modified to arrive at the claimed inventions would be insufficient to establish a prima facie case of obviousness. Furthermore, it is not clear how such modification could be achieved without a substantial reconstruction or redesign of the

² See MPEP 2131: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," (Citations omitted) (emphasis added). See also MPEP 2143.03: "All words in a claim must be considered in judging the patentability of that claim against the prior art."

³ MPEP 2143.03.

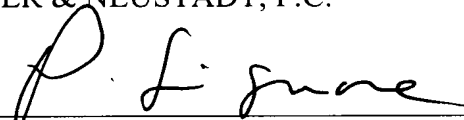
teachings of the Balderson et al., Gabele et al., Perlman et al., Krumhar et al. and Kurrie patents.⁴

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 17-40 is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,

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⁴ See In re Ratti, 270 F.2d 810, 813, 123 USPQ 349, 352 (reversing an obviousness rejection where the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate.")